



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Honorable James S. Gilmore, III
Governor of Virginia
Office of the Governor
State Capitol, 3rd Floor
Richmond, Virginia 23219

DEC 18 2000

Dear Governor Gilmore:

I am writing concerning Virginia's efforts to comply with the regional strategy to reduce smog across the eastern United States by reducing emissions of nitrogen oxides (NO_x.) This strategy -- known as the NO_x SIP Call -- will protect the health of over one hundred million Americans living in the Commonwealth of Virginia and the eastern United States from harmful levels of air pollution. Reducing these emissions will prevent thousands of smog-related illnesses each year, including aggravated cases of childhood asthma.

The U. S. Environmental Protection Agency (EPA) is well aware of the progress made by the Commonwealth of Virginia to meet air pollution improvement goals in the NO_x SIP Call. However, the proposed materials that Virginia has submitted to EPA do not meet the requirements of the NO_x SIP Call for making a complete submission, including adopted rules, by October 30, 2000. Our preliminary assessment of your submittal also reveals several problems with your rules, which are set out in the enclosed document. EPA anticipates that in the future Virginia will correct these problems so that the Agency can approve the State plan to reduce smog-forming NO_x.

If a state does not submit a plan to EPA that meets the requirements of the NO_x SIP Call, including adopted rules, the Clean Air Act authorizes EPA to make a "finding" of failure to submit a plan. Consequently, EPA is issuing a "finding" that Virginia did not submit a complete, fully adopted State Implementation Plan (SIP) in response to the NO_x SIP Call. Please be assured that we will continue to work closely with you and your Department of Environmental Quality to undertake all necessary efforts to ensure that the state makes a complete submission, including adopted rules, as soon as possible. Making such a finding is an important step in ensuring that all 19 states and the District of Columbia subject to the NO_x SIP Call are moving forward to meet their responsibility to reduce NO_x emissions that cause smog in downwind states.

Customer Service Hotline: 1-800-438-2474

I believe it is essential for us to take action as quickly as possible to achieve the public health benefits from this ground-breaking strategy. By acting expeditiously, you can secure cleaner air for the citizens of the Commonwealth of Virginia and other states in the eastern United States.

Sincerely,



Bradley M. Campbell
Regional Administrator

Enclosure

cc: John Paul Woodley, Jr., Secretary
Dennis H. Treacy, Director

Enclosure

After EPA issued the regional transport rule, known as the NOx SIP Call, in September 1998 to reduce smog across the eastern United States, several parties challenged the rule in court. In May 1999, as an interim measure, the Court stayed the requirement that states submit their plans to address transported smog. On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit issued a decision largely upholding the NOx SIP Call. Subsequently, the Court lifted the stay and ordered EPA to allow states until October 30, 2000 to submit adopted rules in response to the NOx SIP Call. In a separate ruling, the Court extended the deadline for full implementation of the NOx SIP Call from May 1, 2003 to May 31, 2004. It is important that we move forward with plans to reduce smog levels by May 31, 2004. Our technical analysis supports that realizing these NOx reductions by 2004 is feasible without endangering the reliability of the electric power supply.

In light of the public health benefits that will result and the March 3, 2000 Court decision upholding the NOx SIP Call, we intend to move forward expeditiously in implementing the regional strategy to reduce smog. The Commonwealth of Virginia has made progress in meeting the requirements of the NOx SIP Call. However, Virginia has not submitted fully adopted rules. Therefore, EPA is notifying Virginia that pursuant to section 179(a) of the Clean Air Act, EPA will shortly publish a notice of final rulemaking in the Federal Register making a finding that Virginia failed to submit a fully adopted SIP meeting the requirements of the NOx SIP Call. Specifics of the requirements and the status of Virginia's efforts to meet them are described in more detail below.

On October 30, 2000, Virginia submitted a request for parallel processing of their proposed revision to their SIP in response to the NOx SIP Call. This proposed SIP revision consists of a regulation (9 VAC 5 Chapter 140) which establishes general provisions and the applicability for a NOx trading program. Since, the Virginia NOx SIP Call rule has not been fully adopted, the SIP submittal can not be considered an official submission. In addition, from a preliminary assessment of Virginia's proposed regulation, 9 VAC 5 Chapter 140, there are some significant problems, identified below, that affect the approvability of the SIP. A significant problem with the proposed rule is that Virginia increased its State budget for electric generating units (EGUs) beyond what was assumed for the EGUs for purposes of the full State budget in the NOx SIP Call Rule. If the Virginia EGU budget is increased, Virginia must demonstrate that it will achieve offsetting reductions from sources under one or more other sectors such that the overall State budget will be met. Virginia did not include in the SIP submittal any documents that demonstrate how the Commonwealth plans to meet the overall State budget. Another problem is the significant expansion of the State's compliance supplement pool from 5,504 allowances to 6,990 allowances.

EPA intends to continue making all necessary efforts to ensure that the Commonwealth of Virginia can submit an adopted rule(s) as soon as possible so that we can avoid the implementation of sanctions, as described below, and so that the Commonwealth can avoid or replace a Federal Implementation Plan (FIP). The EPA is making this finding to continue the

process to protect public health, to assist downwind nonattainment areas in reaching attainment for the 1-hour ozone standard and to ensure equity with states that have submitted adopted rules.

If Virginia has not submitted a plan that EPA affirmatively determines is complete within 18 months of EPA's finding, pursuant to CAA section 179(a) and 40 CFR section 52.31, the offset sanction identified in the CAA section 179(b) will be applied in any nonattainment areas within Virginia. If Virginia has still not made a complete submission six months after the offset sanction is imposed, then the highway funding sanction will apply in any nonattainment areas in accordance with 40 CFR 52.31. The EPA notes that currently the only area within the Commonwealth of Virginia that meets the definition of an affected area is the portion of the Commonwealth that is part of the Metropolitan Washington, D. C. nonattainment area. The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA affirmatively finds that the Commonwealth has made a complete submittal.

In addition, section 110(c) of the CAA provides that EPA promulgate a FIP no later than two years after a finding under section 179(a). Even if EPA promulgates a federal plan, the sanctions process will continue until such time as EPA determines the Commonwealth has submitted a complete SIP.